

(b) If we do not meet any of the deadlines in this section, the lessee or Indian landowners may take appropriate action under § 162.588.

§ 162.577 How will BIA decide whether to approve an assignment of a WSR lease?

(a) We may disapprove an assignment of a WSR lease only if at least one of the following is true:

(1) The Indian landowners have not consented and their consent is required;

(2) The lessee's mortgagees or sureties have not consented;

(3) The lessee is in violation of the lease;

(4) The assignee does not agree to be bound by the terms of the lease;

(5) The requirements of this subpart have not been met; or

(6) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(6) of this section, we may consider whether:

(1) The value of any part of the leased premises not covered by the assignment would be adversely affected; and

(2) If a performance bond is required, the assignee has posted the bond or security and provided supporting documents that demonstrate that:

(i) The lease will be enforceable against the assignee; and

(ii) The assignee will be able to perform its obligations under the lease or assignment.

(c) We will defer, to the maximum extent possible, to the Indian landowners' determination that the assignment is in their best interest.

(d) We may not unreasonably withhold approval of an assignment.

WSR LEASE SUBLEASES

§ 162.578 May a lessee sublease a WSR lease?

(a) A lessee may sublease a WSR lease by meeting the consent requirements in § 162.579 and obtaining our approval of the sublease under §§ 162.580 and 162.581, or by meeting the conditions in paragraph (b) of this section.

(b) The lessee may sublease without meeting consent requirements or ob-

taining BIA approval of the sublease, if:

(1) The lease provides for subleasing without meeting consent requirements or obtaining BIA approval;

(2) The sublease does not relieve the lessee/sublessor of any liability; and

(3) The parties provide BIA with a copy of the sublease within 30 days after it is executed.

§ 162.579 What are the consent requirements for a sublease of a WSR lease?

(a) Unless the lease provides otherwise, the lessee must notify all Indian landowners of the proposed sublease.

(b) The Indian landowners, or their representatives under § 162.013, must consent to a sublease in the same percentages and manner as a new WSR lease under § 162.012, unless the lease:

(1) Provides that individual Indian landowners are deemed to have consented where they do not object in writing to the sublease within a specified period of time following the landowners' receipt of the sublease and the lease meets the requirements in paragraph (c) of this section;

(2) Authorizes one or more representatives to consent to a sublease on behalf of all Indian landowners; or

(3) Designates us as the Indian landowners' representative for the purposes of consenting to a sublease.

(c) If the lease provides for deemed consent under paragraph (b)(1) of this section, it must require the parties to submit to us:

(1) A copy of the executed sublease or other documentation of any Indian landowners' actual consent;

(2) Proof of mailing of the sublease to any Indian landowners who are deemed to have consented; and

(3) Any other pertinent information for us to review.

§ 162.580 What is the approval process for a sublease of a WSR lease?

(a) When we receive a sublease that meets the requirements of this subpart, we will notify the parties of the date we receive it. If our approval is required, we have 30 days from receipt of the executed sublease, proof of required consents, and required documentation to approve or disapprove the sublease

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or inform the parties to the sublease and Indian landowners in writing that we need additional review time. Our determination whether to approve the sublease will be in writing and will state the basis for our approval or disapproval.

(b) Our letter informing parties that we need additional review time must identify our initial concerns and invite the parties to respond within 15 days of the date of the letter. We have 30 days from sending the letter informing the parties that we need additional time to approve or disapprove the sublease.

(c) If we do not meet the deadline in paragraph (a) of this section, or paragraph (b) of this section if applicable, the sublease is deemed approved to the extent consistent with Federal law. Unless the lease provides otherwise, provisions of the sublease that are inconsistent with Federal law will be severed and unenforceable; all other provisions of the sublease will remain in force.

§ 162.581 How will BIA decide whether to approve a sublease of a WSR lease?

(a) We may disapprove a sublease of a WSR lease only if at least one of the following is true:

(1) The Indian landowners have not consented and their consent is required;

(2) The lessee's mortgagees or sureties have not consented;

(3) The lessee is in violation of the lease;

(4) The lessee will not remain liable under the lease; and

(5) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(5) of this section, we may consider whether the value of any part of the leased premises not covered by the sublease would be adversely affected.

(c) We will defer, to the maximum extent possible, to the Indian landowners' determination that the sublease is in their best interest.

(d) We may not unreasonably withhold approval of a sublease.

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WSR LEASEHOLD MORTGAGES

§ 162.582 May a lessee mortgage a WSR lease?

(a) A lessee may mortgage a WSR lease by meeting the consent requirements in §162.583 and obtaining our approval of the leasehold mortgage under §§162.584 and 162.585.

(b) Refer to §162.574(c) for information on what happens if a sale or foreclosure under an approved mortgage of the leasehold interest occurs.

§ 162.583 What are the consent requirements for a leasehold mortgage of a WSR lease?

(a) Unless the lease provides otherwise, the lessee must notify all Indian landowners of the proposed leasehold mortgage.

(b) The Indian landowners, or their representatives under §162.013, must consent to a leasehold mortgage in the same percentages and manner as a new WSR lease under §162.012, unless the lease:

(1) States that landowner consent is not required for a leasehold mortgage and identifies what law would apply in case of foreclosure;

(2) Provides that individual Indian landowners are deemed to have consented where they do not object in writing to the leasehold mortgage within a specified period of time following the landowners' receipt of the leasehold mortgage and the lease meets the requirements of paragraph (c) of this section;

(3) Authorizes one or more representatives to consent to a leasehold mortgage on behalf of all Indian landowners; or

(4) Designates us as the Indian landowners' representative for the purposes of consenting to a leasehold mortgage.

(c) If the lease provides for deemed consent under paragraph (b)(2) of this section, it must require the parties to submit to us:

(1) A copy of the executed leasehold mortgage or other documentation of any Indian landowners' actual consent;

(2) Proof of mailing of the leasehold mortgage to any Indian landowners who are deemed to have consented; and

(3) Any other pertinent information for us to review.